

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules	)	CC Docket No. 94-102
To Ensure Compatibility with Enhanced	)	
911 Emergency Calling Systems	)	
	)	
VA 10 RSA Limited Partnership	)	DA 98-2631
Petition For Limited Waiver of Section	)	DA 01-2459
20.18(g) of the Commission's Rules	)	

To: The Wireless Telecommunications Bureau

**PETITION OF VIRGINIA 10 RSA LIMITED PARTNERSHIP FOR  
LIMITED WAIVER OF SECTION 20.18(g) OF THE COMMISSION'S RULES**

VIRGINIA 10 RSA LIMITED PARTNERSHIP

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Dated: November 29, 2001

## **SUMMARY**

Because Virginia 10 RSA Limited Partnership (“VA-10”) provides analog-only cellular service in certain, sparsely populated counties in Virginia RSA 10, it utilizes a cell layout in which large sections of its service area are served by a single transmitting station site (or cell). In order to deploy the most economical system to meet the RSA’s needs, VA-10 did not install its own cellular switch, but instead, obtains switching services under contract from a switch owned and operated by Verizon Wireless, Inc. (“Verizon”). Consistent with Verizon’s November 9, 2000 E911 Carrier Report for the host switch, VA-10 advised the Federal Communications Commission (“Commission”) that it too intended to deploy a network-based approach to provide Phase II E911 service. In July of 2001, Verizon filed an amended Phase II report advising the Commission of its decision to deploy a network assisted, handset-based solution for E911 location technology. VA-10 informally has been advised by Verizon that if VA-10 still intends to deploy a network-based solution, it would need to do so independent of the Verizon network.

Accordingly, VA-10 now faces the situation where it has to explore an independent analog network-based E911 Phase II solution or convert its entire network to a CDMA digital network in order to deploy a handset-based solution that would remain compatible with the Verizon host switch. In light of the foregoing, VA-10 is uncertain as to its ability to economically deploy a network-based solution that meets the Commission’s accuracy requirements and may be required to convert to a handset-based solution at such time as a network-based implementation deadline is triggered by a Public Safety Answering Point (“PSAP”). As of this date, VA-10 has not received any PSAP requests for Phase II E911 service. Therefore, the six-month deployment deadline for the network-based E911 Phase II solution has

not been triggered. VA-10 files the instant waiver request out of an abundance of caution in order to ensure that if a change to handset-based E911 Phase II deployment ultimately proves necessary, VA-10 will not be in violation of the applicable rules relating to the deployment of Automatic Location Identification (“ALI”)-capable handsets.

Thus, VA-10 respectfully requests (1) an extension of time up to and including December 31, 2002 in which to begin selling and activating Phase II-compliant handsets and to complete corresponding upgrades to its cellular switch; and (2) approval of the following revised deadlines for implementing Phase II-compliant handset activations: 25% of new activations by March 31, 2003; 50% of new activations by October 31, 2003; 100% of new activations by April 30, 2004; and 95% of embedded base by December 31, 2006.

VA-10 urges the Commission to grant the limited waiver requested herein.

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**PETITION OF VIRGINIA 10 RSA LIMITED PARTNERSHIP FOR  
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Virginia 10 RSA Limited Partnership ("VA-10"), the B block cellular licensee for Virginia RSA 10 (B2), by its attorneys and pursuant to Section 1.3 of the Federal Communications Commission's ("Commission") Rules, 47 C.F.R. §1.3 and the Public Notices in the above-captioned proceeding,<sup>1</sup> hereby requests a limited waiver of Section 20.18(g) of the Commission's Rules, 47 C.F.R. §20.18(g), with respect to the October 1, 2001 deadline for

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<sup>1</sup> "Wireless Telecommunications Bureau Outlines Guidelines For Wireless E911 Rule Waivers For Handset-Based Approaches To Phase II Automatic Location Identification Requirements," DA 98-2631, released December 24, 1998 ("*Wireless E911 Waiver Public Notice*"); "Commission Establishes Schedule for E911 Phase II Requests by Small and Mid-Sized Wireless Carriers, CC Docket No. 94-102," *Public Notice*, FCC 01-302, rel. Oct. 12, 2001 ("*October 12 Public Notice*"); and "Wireless Telecommunications Bureau Provides Guidance on Filings By Small and Mid-Sized Carriers Seeking Relief From Wireless E911 Phase II Automatic Location Identification Rules, CC Docket No. 94-102," *Public Notice*, DA 01-2459, rel. Oct. 19, 2001 ("*October 19 Public Notice*").

implementing Phase II E911 service.<sup>2</sup> On October 12, 2001, the Commission ruled on five nationwide carriers' requests for waiver of the Commission's enhanced 911 Phase II implementation plans,<sup>3</sup> and gave small and mid-sized carriers until November 30, 2001 to file requests for waiver of E911 Phase II implementation requirements or to supplement or revise pending requests for waiver.<sup>4</sup> VA-10 is submitting this waiver request in accordance with that Public Notice and, in support hereof, the following is respectfully shown:

## **I. STATEMENT OF FACTS**

VA-10 provides analog-only cellular service in Virginia RSA 10, Market No. 690B(2) (Frederick), which is comprised of Frederick, Page, Shenandoah, Warren, Rappahannock, and Clarke counties in Virginia's upper northwest corner.<sup>5</sup> These counties are relatively large, sparsely populated, and include mountainous terrain. As a result, VA-10 utilizes a cell layout in

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<sup>2</sup> To the extent necessary, VA-10 respectfully requests a limited waiver of any other subsection of Section 20.18 (e.g., 20.18(e) and (h), which require licensees to provide Phase II E911 service in accordance with quantified accuracy standards) that the Commission deems necessary and relevant to extending the October 1, 2001 deadline stated in Section 20.18(g)(1).

<sup>3</sup> See In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by AT&T Wireless, CC Docket No. 94-102, Order, FCC 01-294, rel. Oct. 12, 2001; In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Nextel Communications, Inc., CC Docket No. 94-102, Order, FCC 01-295, rel. Oct. 12, 2001; In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless LLC, CC Docket No. 94-102, Order, FCC 01-296, rel. Oct. 12, 2001; In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS, CC Docket No. 94-102, Order, FCC 01-297, rel. Oct. 12, 2001; and In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless, CC Docket No. 94-102, Order, FCC 01-299, rel. Oct. 12, 2001.

<sup>4</sup> October 12 Public Notice.

<sup>5</sup> VA-10 provides cellular service under Call Sign KNKN895 (B2 portion of market).

which large sections of the market are served by a single transmitting station site (or cell). In this design, cell contour overlap is typically limited to areas where “hand-off” from one cell coverage area to another is essential for continuous, uninterrupted communications. In order to deploy the most economical system to meet the RSA’s needs, VA-10 did not install its own cellular switch but, instead, obtains switching services under contract from a switch owned and operated by Verizon Wireless, Inc. (“Verizon”). Consistent with Verizon’s November 9, 2000 E911 Carrier Report for the host switch, VA-10 advised the Commission that it too intended to deploy a network-based approach to provide Phase II E911 service.<sup>6</sup> As of this date, VA-10 has not received any Public Safety Answering Point (“PSAP”) requests for Phase II E911 service. Accordingly, the six-month deployment deadline for the network-based E911 Phase II solution has not been triggered.

In July of 2001, Verizon filed an amended Phase II report advising the Commission of its decision to deploy a network assisted, handset-based solution for E911 location technology. Verizon explained in that filing that the ability to satisfy the Commission’s accuracy requirements with a network based solution cannot be guaranteed, particularly for rural applications.<sup>7</sup> Upon learning of this amended filing, VA-10 sought clarification from Verizon as to whether Verizon still intended to support a network-based solution in conjunction with the VA-10 market. VA-10 informally has been advised that if VA-10 still intends to deploy a network-based solution, it would need to do so independent of the Verizon network.

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<sup>6</sup> Virginia 10 RSA Limited Partnership Phase II E911 Report to the FCC, November 9, 2000.

<sup>7</sup> Updated Phase II E911 Report and Request for Limited Waiver of Verizon Wireless, CC Docket 94-102, filed July 25, 2001.

To the best of VA-10's knowledge, there are no Automatic Location Identification ("ALI")-capable analog-only handsets even planned for development. The dual mode (analog and CDMA) handsets which VA-10 has identified as being ALI-capable are only capable of providing the ALI functionality when operating in the digital mode. Even those handsets are not yet commercially available. Accordingly, VA-10 now faces the situation where it has to explore an independent analog network-based E911 Phase II solution or convert its entire network to a CDMA digital network in order to deploy a handset-based solution that would remain compatible with the Verizon host-switch. In light of the foregoing, VA-10 is uncertain as to its ability to economically deploy a network-based solution that meets the Commission's accuracy requirements and may be required to convert to a handset-based solution at such time as a network-based implementation deadline is triggered by a PSAP. However, if VA-10 were to need to change to a handset-based deployment at that future date, it would not be in compliance with the deployment requirements for the sale of ALI-compatible handsets. Accordingly, VA-10 herein seeks a limited waiver of those ALI-compatible handset deployment dates and respectfully requests an extension of time up to and including December 31, 2002 in which to begin selling and activating Phase II-compliant handsets; 25% of new activations by March 31, 2003; 50% of new activations by October 31, 2003; 100% of new activations by April 30, 2004; and 95% of embedded base by December 31, 2006.

## **II. DISCUSSION**

The Commission may grant a waiver for "good cause shown" if the waiver is deemed in the public interest or if there are unique factual circumstances that render application of the rule



inequitable or particularly burdensome.<sup>8</sup> Citing *WAIT Radio*, the *Wireless E911 Waiver Public Notice* stated (at 4) that the Commission may waive a rule “where waivers are founded upon an ‘appropriate general standard,’ ‘show special circumstances warranting a deviation from the general rule,’ and ‘such deviation will serve the public interest.’” In its *Fourth MO&O* in this proceeding, the Commission concluded that there may be instances where waivers of Phase II E911 rules will be necessary, particularly if “technology-related issues” or “exceptional circumstances” preclude Phase II services from being deployed.<sup>9</sup>

As shown below, the instant petition complies with all the waiver standards articulated in the above-cited rules, decisional precedent, and orders and public notices issued in CC Docket No. 94-102. VA-10 is in the unique position of learning that the entity that provides its switching services no longer intends to deploy a network-based solution for meeting E911 Phase II requirements. While questions remain as to whether or not an economical network-based solution could meet the Commission’s accuracy requirements in rural deployments that utilize large, omni-directional cell sites with minimal coverage overlap between adjacent cell sites, it appears as though no handset vendor intends to market a handset that is capable of providing ALI functionality in the analog mode, an absolute requirement if VA-10 was to be able to provide a handset-based solution on its existing network. However, even the CDMA digital

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<sup>8</sup> 47 C.F.R. §§ 1.3, 1.925; *Northeast Cellular Telephone Co v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) *cert. denied*, 409 U.S. 1027 (1972).

<sup>9</sup> Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (Fourth Memorandum Opinion and Order in CC Docket No. 94-102), FCC 00-326, 15 FCC Rcd. 17442 ¶ 43 (2000), recon. pending (“Fourth MO&O”).

ALI-capable handsets which are planned are not yet commercially available and would not work on VA-10's network unless and until it was upgraded to CDMA digital. Finally, even if the VA-10 network were upgraded to digital and ALI-capable handsets were available and sold, the VA-10 system would not be capable of providing the requisite E911 Phase II service until such time as the Verizon host switch was fully upgraded. VA-10 respectfully submits that these facts clearly constitute “exceptional circumstance” and a “technological issue” rendering adherence to the original ALI-capable handset deployment deadline impossible – not to mention “inequitable” and “particularly burdensome.” By allowing for the orderly implementation of Phase II-compliant handsets, the limited waiver requested here will further the policy objectives animating Section 20.18(g) of the Commission’s Rules while serving the public’s interest in widely-available and accurate wireless E911 service. For these reasons, VA-10’s request should be granted.

**A. PHASE II COMPLIANT HANDSETS AND SWITCH UPGRADES ARE COMMERCIALLY UNAVAILABLE**

The switch-upgrade issue has been addressed by the Commission in granting the Verizon waiver. Accordingly, the Commission is already aware that the host switch for the VA-10 market cannot yet support ALI handset functionality. Moreover, ALI-capable handsets are, at present, commercially unavailable. This situation remains unremedied even after the October 1, 2001 Phase II compliance deadline stated in Section 20.18(g)(1) – an unavoidable fact that others

have amply demonstrated in this proceeding<sup>10</sup> and independently verified by VA-10 in discussions with its own handset suppliers. Thus, for reasons beyond VA-10's control, it is unable to deploy a handset-based solution or begin selling ALI-capable handsets in accordance with the deadline imposed by Section 20.18(g)(1).

Relying on claims by handset and network equipment manufacturers, the Commission last year concluded that an October 1, 2001 deadline for deploying E911 Phase II service was reasonable.<sup>11</sup> According to the Commission, "ALI technologies are already, or will soon be, available" for carriers seeking to comply with Phase II requirements.<sup>12</sup> This Commission prediction concerning equipment has proven to be unrealistic. No handset vendor is willing or able to ever commit to provide VA-10 with ALI-capable, analog-only handsets. To deploy a Verizon-compatible handset solution would require upgrade of VA-10's network to CDMA digital, and even then, there are no handsets yet available.

The Commission should understand that for many subscribers in the rural portions of this country, the far less expensive, analog-only cellular phone meets all of their needs for basic, reliable voice communications. Indeed, VA-10 continues to sell services notwithstanding the fact that it competes directly with digital PCS service providers in its market. The need to meet

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<sup>10</sup> See, e.g., Leap Wireless International, Inc. Petition for Partial Waiver of E-911 Phase II Implementation Milestones at 13-16 (August 23, 2001); Comments of AT&T Wireless Services, Inc. at 6 (August 20, 2001); Inland Cellular Telephone Co. Petition for Limited Waiver of Sections 20.18(e) and (g) of the Rules at 3 (July 30, 2001); Qwest Wireless, LLC and TW Wireless, LLC's Petition for Extension or Time or Waiver of Section 20.18 of the Rules at 8 (July 23, 2001); and South Canaan Cellular Communications Company L.P. Petition for Waiver of Section 20.18(g) of the Rules at 2 (August 31, 2001).

<sup>11</sup> Although, as discussed above, the Commission will not enforce the October 1, 2001 deadline against small and mid-sized carriers until it rules on petitions for waiver filed on or before November 30, 2001. See *October 12 Public Notice*.

<sup>12</sup> *Fourth MO&O*, 15 FCC Rcd. 17442 at ¶ 44.

E911 Phase II accuracy requirements may render this lower-cost basic service offering a thing of the past. If an economical network-based solution cannot be deployed, then VA-10 will be forced to “upgrade” its network to CDMA digital and provide a handset-based E911 solution.

Significantly, VA-10 has not yet received any public service answering point (“PSAP”) requests for E911 Phase II service. Until that time, VA-10 does not intend to abandon its hope to be able to deploy an economical network-based solution and will continue to explore such alternatives. If, at the time of a PSAP request, VA-10 is able to deploy the originally proposed network-based solution, the waivers sought herein will be unnecessary. However, because of the Verizon change from a network-based solution to a handset-based solution, coupled with the lingering questions surrounding the ability to economically deploy an independent network-based solution that will satisfy the Commission’s accuracy requirements in a rural deployment, VA-10 may find it necessary to upgrade its analog-only network to digital and deploy a handset-based solution. Therefore, VA-10 files the instant waiver request out of an abundance of caution in order to ensure that if such a change ultimately proves necessary, it will not be in violation of the applicable rules relating to the deployment of ALI-capable handsets.

As others have noted, small rural carriers like VA-10 face a specific disadvantage in attempting to obtain location-capable equipment and technology from manufacturers. As compared to urban carriers or large regional and nationwide carriers, rural carriers, whose subscriber numbers are comparatively small and geographically dispersed, are unable to negotiate directly with handset manufacturers and typically acquire their handsets from distributors. Relative to carriers with regional or nationwide footprints, rural licensees will have the least negotiating leverage to secure any priority in obtaining new handsets even when they do

become commercially available. As succinctly described by Inland Cellular Telephone Co. (“Inland”) in its recent Phase II waiver request:

Smaller carriers in smaller markets are at the ‘end of the line’ for product distribution. It is accepted industry practice that [General Availability] dates are availability dates for large market carriers only and that small carriers can expect significant delays. It is Inland’s experience that it often takes anywhere from six to nine months *after* the General Availability (“GA”) date for Inland to receive its equipment.<sup>13</sup>

VA-10 vigorously echoes these sentiments. Lacking the market power that induces manufacturers to engage in direct negotiations, VA-10 must deal with intermediaries that face no regulatory consequences, even after the October 1, 2001 deadline to provide Phase II-compliant handsets has passed. Moreover, even if contrary to all expectations and indications the GA date for this equipment were to occur shortly, months will pass before the product trickles down to small rural carriers like VA-10. As a result, VA-10 and other rural carriers opting for the handset approach to E911 Phase II compliance are compelled to pursue a limited waiver of Section 20.18(g)(1).

**B. SMALL AND RURAL CARRIERS FACE UNIQUE ISSUES IN MEETING THEIR E911 PHASE II OBLIGATIONS**

Various rural carriers, similarly situated to VA-10, advised the Commission in November 2000 of their plans to deploy a handset-based solution for meeting the E911 Phase II requirements set forth in Section 20.18(e)(h). The handset approach was selected by these

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<sup>13</sup> Inland Cellular Telephone Co. Petition For Limited Wavier Of Sections 20.18(e) and (g) Of The Rules, dated July 30, 2001, at 6 (emphasis in the original).

carriers because the costs associated with a network-based deployment are intolerably high for a small, rural carrier that has only a relatively modest number of subscribers over which to spread the costs of complying not only with E911 Phase II, but such other federal mandates as Communications Assistance Law Enforcement Act (“CALEA”), wireless number portability, *etc.* In addition, there remains substantial uncertainty as to whether a network-based solution will provide the location accuracy quantified in Section 20.18(h) in non-urban environments with an expansive geographic area served by the minimum number of cell sites needed to provide reliable coverage to a sparse and diffuse population. Moreover, in many cases, topographical features impede radio propagation.

For the foregoing reasons, the unique attributes of providing wireless communications in rural areas in many cases eliminates the network-based approach as a viable option for carriers seeking to comply with their E911 Phase II obligation. Many rural carriers have already concluded that only the handset-based solution was economically feasible. Since Verizon, VA-10's host switch provider, has now also changed from a network-based to a handset-based solution, VA-10 faces an increased likelihood that it too will ultimately have no alternative but to deploy a handset-based solution, requiring the upgrade of its entire network to CDMA digital. However, even if VA-10 were to proceed immediately with such a network upgrade, given that its host switch has been granted a waiver of the deployment deadline, coupled with the continued unavailability of ALI-capable handsets, compliance with the Commission's rules would remain impossible.

**C. GRANTING A LIMITED WAIVER TO VA-10 WILL SERVE THE PUBLIC INTEREST WITHOUT PREJUDICE TO PSAPS**

Granting the limited waiver sought by VA-10 here will entail no delay, increased cost or other prejudice to PSAPs or the public safety community in VA-10's service territory. Indeed,

no PSAP has requested that VA-10 initiate Phase II implementation, and no network-based solution, as originally envisioned, would be deployed by VA-10 until six (6) months after it has received such a request. Should deployment of a handset-based approach prove necessary, no delay will ensue from grant of the limited waiver proposed here. It is the commercial unavailability of Phase II handsets (and switch upgrades relating to the VA-10 host switch) that are causing the delay; the multiple waivers which the Commission has received and is expected to receive through November 30, 2001 are merely the unavoidable consequence (not the cause) of the unfortunate delay in Phase II deployment. Thus, the extension of the handset deployment schedule sought herein will prejudice neither PSAPs, the public safety community, VA-10's subscribers, nor the general public.

In sharp contrast, denial of the waiver will serve no purpose. The handsets simply do not yet exist at this time, making it impossible to comply with the current handset-based solution deadlines. This, coupled with the fact that no PSAP has yet even to request E911 Phase II service from VA-10, makes it clear that denial of this waiver would neither hasten the availability of E911 service to the market nor serve any other public interest.

#### **D. PROPOSED COMPLIANCE SCHEDULE**

VA-10 respectfully requests an extension of time up to and including December 31, 2002 in which to begin selling Phase II-compliant handsets and approval of the following revised deadlines for implementing Phase II-compliant handset activations: 25% of new activations by March 31, 2003; 50% of new activations by October 31, 2003, 100% of new activations by April 30, 2004; and 95% of embedded base by December 31, 2006. These dates are based upon the modified schedule granted to Verizon with added time for handset supplies to become available to small, rural carriers like VA-10.

The proposed compliance schedule is necessitated by the present commercial unavailability of Phase II-compliant handsets. It is further compelled by the discrimination customarily faced by small, rural carriers with respect to wireless equipment that is in high demand. Even if the general availability date for Phase II-compliant handsets and switch upgrades was to occur in the near future, the demands of the large urban carriers would quickly exhaust the initial supply. Several additional months will pass before product “trickles down” to small rural carriers like VA-10. In this context, the extension represented by VA-10’s proposed compliance schedule is eminently reasonable, appropriate and necessary. Whether and when ALI-capable handsets are available is completely outside of VA-10’s control. Therefore, if, as VA-10’s revised deadline approaches, Phase II-compliant handsets and necessary upgrades to cellular switching systems are still unavailable commercially, VA-10 will so advise the Commission.

Additionally, with respect to the anticipated cost of the yet-unavailable ALI-capable handsets, VA-10 understands that the cost of these handsets may vary anywhere from \$100.00 to \$200.00 more per telephone than that of current analog-only handsets sold by VA-10. Indeed, while there are digital service offerings from PCS providers in the area served by VA-10, there are a great number of customers that find the much less expensive analog-only handset capable of meeting all of their needs. This has been the predominant factor in VA-10's decision not to upgrade its network to digital. This handset cost uncertainty makes it more difficult to project whether consumers will be willing to spend extra money to purchase a handset with ALI capability; whether VA-10 will be able to absorb the cost difference without operating at a loss; and ultimately raises further questions related to VA-10’s ability to meet the Commission’s percentage thresholds for selling and activating ALI-capable handsets. If, once ALI-capable



handsets are generally available, and the cost of those handsets becomes known, VA-10 finds that it is unable to sell ALI-capable handsets in numbers which would meet the required penetration percentages, it reserves the right to request a further waiver of the Commission's rules at that time.

### III. CONCLUSION

The foregoing demonstrates and explains the technology-related issues and special circumstances that satisfy the general requirements to waive a Commission rule, as well as the more detailed requirements to waive the E911 Phase II rules set forth in the *Fourth MO&O* and the *October 19 Public Notice*, as they relate to the schedule to deploy ALI-capable handsets. Accordingly, there is good cause to grant the limited waiver requested herein.

Respectfully submitted,

VIRGINIA-10 RSA LIMITED PARTNERSHIP

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Dated: November 29, 2001

## **CERTIFICATE OF SERVICE**

I, CAROL MINDZAK, a secretary with the law firm of Kurtis & Associates, P.C., do hereby certify that I have this 29<sup>th</sup> day of November 2001, had copies of the foregoing “PETITION OF VA 10 RSA LIMITED PARTNERSHIP FOR LIMITED WAIVER OF SECTION 20.18(g) OF THE COMMISSION’S RULES” sent via first class United States mail to the following:

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